

808 KAR 12:026. Procedures for distributing and using funds from the Mortgage Fraud Prosecution Fund.

RELATES TO: KRS 286.8-150, 286.8-225, 286.8-227

STATUTORY AUTHORITY: KRS 286.8-140(1), 286.8-227

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-227 requires the Commissioner to promulgate administrative regulations, in consultation with the Attorney General and local prosecutors, establishing requirements for the distribution of funds in the Mortgage Fraud Prosecution Fund. This administrative regulation establishes the procedures for distributing and using funds from the Mortgage Fraud Prosecution Fund.

Section 1. Definitions. (1) "Commissioner" means the commissioner of the department.

(2) "Department" means the Department of Financial Institutions. (3) "Mortgage Fraud Prosecution Fund" or "Fund" means the account established under KRS 286.8-225 and 286.8-227.

(4) "Prosecutorial agency" means:

- (a) The office of the Kentucky Attorney General;
- (b) The office of the United States Attorney;
- (c) The office of any county or commonwealth attorney in the Commonwealth of Kentucky; or
- (d) Any other state or federal regulatory agency.

Section 2. Authorization for Use of Funds. (1) The commissioner is authorized to disburse funds held in the mortgage fraud prosecution fund to cover the expenses of the department or any prosecutorial agency for the purposes of prosecuting or aiding the prosecution of fraudulent activities in the mortgage lending process, whether the prosecution arises from an investigation initiated or conducted by the department or from the independent investigation of any law enforcement agency. In addition, the funds may be used to cover the expenses for training related to the prevention, detection, or investigation of mortgage-related fraud, and consumer education related to mortgage fraud.

(2) Prosecution and other authorized expenses may relate to the following:

- (a) Training;
- (b) Investigation;
- (c) Trial preparation and trial, including discovery;
- (d) Witness expenses;
- (e) Travel expenses;
- (f) Sentencing;
- (g) Appeal; or
- (h) Consumer education initiatives.

Section 3. Application and Approval for Disbursement of Funds. (1) The department may utilize any of the following for application, approval, and disbursement of funds to prosecutorial agencies:

(a) A written agreement or memorandum of understanding with a prosecutorial agency covering actual expenses for a set period of time or the actual expenses for a particular prosecution, investigation, training, or initiative. Each agreement or memorandum of understanding shall be signed by the commissioner and an authorized representative of the prosecutorial agency and shall identify:

- 1. The effective period;

2. The expenses to be covered;
3. The dollar limit, if any; and
4. The manner and form of billing expenses and the process for disbursement of funds.

(b) A written application submitted to the department for payment of prosecution-related or other authorized expenses shall include the following information:

1. The prosecutorial agency applicant name, address, and contact information;
2. A detailed description and estimated amount of the expenses sought to be covered, or if expenses have already been incurred, proof of incurrence of such expenses;
3. A detailed description of the cases, persons, and crimes being considered for prosecution, if applicable; and
4. A detailed description of the expenses, training, or initiative being proposed or sought for reimbursement.

(c) For funds sought to be utilized by the department for the purposes set forth in Section 2 of this administrative regulation, the commissioner shall maintain an accounting and memorandum of all these expenditures which shall include the information required under paragraph (b) of this subsection.

(2) The commissioner shall approve or deny the application for funds in writing. The approval shall contain the terms of disbursement including the maximum amount to be reimbursed, the billing process to be implemented, and reporting requirements for the disbursement of funds.

(3) A completed invoice or voucher in a form acceptable to the commissioner shall be submitted for all prosecution expenses for which payment or reimbursement from the account is sought.

Section 4. Funding Criteria. Allocation of funds by the commissioner to prosecutorial agencies shall be based on funds available in the mortgage fraud prosecution fund and the following:

- (1) The likelihood that any investigation or inquiry will lead to criminal prosecution;
- (2) Whether criminal prosecution is imminent; or
- (3) A demonstration of need for funds to accomplish the purposes set forth in Section 2 of this administrative regulation.

Section 5. Disbursement Limitation. The commissioner is not required to disburse any funds unless the mortgage lending fraud prosecution account contains sufficient funds to cover the agreed disbursements. The commissioner and the department shall not be required to make disbursements from the department's own operating funds.

Section 6. Confidentiality of Information Provided in Funding Applications. The commissioner shall deem confidential and withhold from public inspection for the time as he considers necessary all information provided by prosecutorial agencies that:

- (1) Is furnished to the department on the express condition that the information remain confidential; or
- (2) That the commissioner deems necessary to protect the public welfare by avoiding the premature or unwarranted disclosure of information concerning any criminal investigation, prosecution, or litigation. (37 Ky.R. 889; Am. 1201; eff. 12-3-2010.)